



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1145 (Bond Return)]

Certain Botulinum Toxin Products, Processes for Manufacturing or Relating to Same and Certain Products Containing Same; Notice of Commission Decision Not to Review an Initial Determination Granting an Unopposed Motion for Return of Bond; Return of Bond

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) of the presiding Administrative Law Judge (“ALJ”) granting an unopposed motion of respondent Evolus, Inc. (“Evolus”) for the return of the bond it paid under the cease and desist order (“CDO”) during the period of Presidential review. The bond is returned to Evolus.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On March 6, 2019, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Medytox Inc. (“Medytox”) of Seoul, South Korea; Allergan

plc of Dublin, Ireland; and Allergan, Inc. of Irvine, California (collectively, “Complainants”). *See* 84 FR 8112-13 (Mar. 6, 2019). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain botulinum toxin products, processes for manufacturing or relating to same and certain products containing same by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure a domestic industry in the United States. *See id.* The notice of investigation names as respondents Daewoong Pharmaceuticals Co., Ltd. (“Daewoong”) of Seoul, Republic of Korea and Evolus of Irvine, California (collectively, “Respondents”). *See id.* The Office of Unfair Import Investigations (“OUII”) was also a party to the investigation. *See id.*

On July 6, 2020, the ALJ issued a final initial determination (“FID”) finding a violation of section 337 based on the misappropriation of Complainants’ asserted trade secrets (including the Medytox bacterial strain and Medytox manufacturing processes), the threat or effect of which is to destroy or substantially injure an industry in the United States. On September 21, 2020, the Commission issued a notice determining to review the FID in part. *See* 85 FR 60489-90 (Sept. 25, 2020).

On December 16, 2020, the Commission found a violation of section 337 based on the misappropriation of Complainants’ trade secrets (including the Medytox manufacturing processes but not the Medytox bacterial strain). *See* 85 FR 83610-11 (Dec. 22, 2020). The Commission issued a limited exclusion order against certain botulinum neurotoxin products that are imported and/or sold by Respondents Daewoong and Evolus and a CDO against Evolus. *See id.* The Commission also set a bond during the period of Presidential review in an amount of \$441 per 100U vial of Respondents’ accused products. *See id.*

On February 12, 2021, Complainants filed an appeal from the Commission’s final determination with the Federal Circuit. On the same day, Respondents also filed an appeal from the Commission’s final determination of a violation of section 337. On February 18, 2021,

Complainants and Evolus (“Settling Parties”) announced that they reached a settlement agreement to resolve all pending issues between them.

On March 3, 2021, the Settling Parties filed a joint petition to rescind the LEO and CDO based on the settlement agreements between Complainants and Evolus. No party opposed the joint petition. On May 3, 2021, the Commission rescinded the remedial orders issued in this investigation based on the settlement agreements. Comm’n Notice (May 3, 2021).

On February 25, 2021, Evolus filed an unopposed motion, pursuant to Commission Rule 210.50(d) (19 CFR 210.50(d)), for the return of the bond it paid under the CDO during the period of Presidential review. On February 26, 2021, the motion was amended to reflect Daewoong’s consent to the motion. On March 4, 2021, OUII filed a response in support of the motion.

On March 31, 2021, the ALJ issued the subject ID granting the motion. The ID notes that the motion was filed within 90 days of the expiration of the period of Presidential review, in compliance with Commission Rule 210.50(d)(1)(ii) (19 CFR 210.50(d)(1)(ii)). *See* ID at 2. The ID also finds no substantive or procedural reason to deny the return of the bond to Evolus. *See id.* No petition for review of the subject ID was filed.

The Commission has determined not to review the subject ID. The bond is returned to Evolus.

The Commission’s vote on this determination took place on May 6, 2021.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 6, 2021.

Lisa Barton,

Secretary to the Commission.

